

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 JESSICA M. AMGWERD, State Bar No. 155757
Deputy Attorney General
4 California Department of Justice
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-7376
Facsimile: (916) 327-8643

7 Attorneys for Complainant
8
9

10 **BEFORE THE**
BOARD OF REGISTERED NURSING
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
12
13

14 In the Matter of the Petition to Revoke
Probation Against:

15 **ERIC P. PHILLIPS**
16 2976 Robinwood Avenue
Clovis, California 93611

17 Registered Nurse License No. 646016

18 Respondent.
19

Case No. *2004-92*

**PETITION TO REVOKE
PROBATION**

20 Ruth Ann Terry, M.P.H, R.N ("Complainant") alleges:

21 **PARTIES**

22 1. Complainant brings this Petition to Revoke Probation solely in her official
23 capacity as the Executive Officer of the Board of Registered Nursing ("Board"), Department of
24 Consumer Affairs.

25 **License History**

26 2. On or about October 6, 2004, the Board issued Registered Nurse License
27 Number 646016 ("license") to Eric P. Phillips ("Respondent"). The license will expire on
28 March 31, 2008, unless renewed.

1 **Prior Discipline**

2 3. In a disciplinary action entitled "In the Matter of the Statement of Issues
3 Against Eric P. Phillips," Case No. 2004-92, the Board issued a Decision, effective September
4 24, 2004, in which Respondent was issued a license which was immediately revoked, the order
5 of revocation was stayed, and Respondent was placed on three years probation with certain terms
6 and conditions. A copy of that Decision is attached as Exhibit A and is incorporated by
7 reference.

8 **JURISDICTION**

9 4. Section 2750 of the Business and Professions Code ("Code") provides, in
10 pertinent part, that the Board may discipline any licensee, including a licensee holding a
11 temporary or an inactive license, for any reason provided in Article 3 (commencing with Code
12 section 2750) of the Nursing Practice Act.

13 5. Code section 2764 provides, in pertinent part, that the expiration of a
14 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
15 against the licensee or to render a decision imposing discipline on the license. Under Code
16 section 2811, subdivision (b), the Board may renew an expired license at any time within eight
17 years after the expiration.

18 6. Code section 118, subdivision (b), provides that the suspension,
19 expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to
20 proceed with a disciplinary action during the period within which the license may be renewed,
21 restored, reissued, or reinstated.

22 **PETITION**

23 7. Grounds exist for revoking the probation and reimposing the order of
24 revocation against Respondent's Registered Nurse License No. RN 646016. Condition No. 11 of
25 the Stipulated Settlement and Disciplinary Order in Statement of Issues No. 2004-92, states:

26 **Violation of Probation.** If Respondent violates the
27 conditions of his probation, the Board after giving Respondent
28 notice and an opportunity to be heard, may set aside the stay order
and impose the stayed discipline (revocation/suspension) of
Respondent's license.

1 If during the period of probation, an accusation or petition
2 to revoke probation has been filed against Respondent's license or
3 the Attorney General's Office has been requested to prepare an
4 accusation or petition to revoke probation against Respondent's
license, the probationary period shall automatically be extended
and shall not expire until the accusation or petition has been acted
upon by the Board.

5 **FIRST CAUSE TO REVOKE PROBATION**

6 **(Comply with the Board's Probation Program)**

7 8. At all times after the effective date of Respondent's probation,
8 Condition No. 2 has stated:

9 **Comply with the Board's Probation Program.**

10 Respondent shall fully comply with the conditions of the Probation
Program established by the Board and cooperate with
11 representatives of the Board in its monitoring and investigation of
the Respondent's compliance with the Board's Probation Program.
12 Respondent shall inform the Board in writing within no more than
15 days of any address change and shall at all times maintain an
13 active, current license status with the Board, including during any
period of suspension.

14 Upon successful completion of probation, Respondent's
15 license shall be fully restored.

16 9. Respondent's probation is subject to revocation for failure to comply with
17 Probation Condition No. 2, in that Respondent failed to comply with Probation Conditions
18 Nos. 5, 6 through 10, 14, and 15, as set forth below.

19 **SECOND CAUSE TO REVOKE PROBATION**

20 **(Submit Written Reports)**

21 10. At all times after the effective date of Respondent's probation,
22 Condition No. 5 has stated:

23 **Submit Written Reports.** Respondent, during the period
24 of probation, shall submit or cause to be submitted such written
reports/declarations and verification of actions under penalty of
25 perjury, as required by the Board. These reports/declarations shall
contain statements relative to Respondent's compliance with all the
26 conditions of the Board's Probation Program. Respondent shall
immediately execute all release of information forms as may be
required by the Board of its representatives.

27 ///

28 ///

Respondent shall provide a copy of this Decision to the nursing regulatory agency in every state and territory in which he has a registered nurse license.

11. Respondent's probation is subject to revocation because he failed to comply with Probation Condition No. 5, referenced above. The facts and circumstances regarding this violation are that Respondent failed to submit his quarterly report to the Board by the due date of April 7, 2007.

THIRD CAUSE TO REVOKE PROBATION

(Function as a Registered Nurse)

12. At all times after the effective date of Respondent's probation, Condition No. 6 has stated:

Function as a Registered Nurse. Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one-year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

13. Respondent's probation is subject to revocation because he failed to comply with Probation Condition No. 6, referenced above. The facts and circumstances regarding this violation are that Respondent failed to work as a registered nurse for a minimum 24-hours per week for six consecutive months in a position approved by the Board.

///

///

1 **FOURTH CAUSE TO REVOKE PROBATION**

2 **(Employment Approval and Reporting Requirements)**

3 14. At all times after the effective date of Respondent's probation,
4 Condition No. 7 has stated:

5 **Employment Approval and Reporting Requirements.**
6 Respondent shall obtain prior approval from the Board before
7 commencing or continuing any employment, paid or voluntary, as a
8 registered nurse. Respondent shall cause to be submitted to the
9 Board all performance evaluations and other employment related
10 reports as a registered nurse upon request of the Board.

11 Respondent shall provide a copy of this Decision to his
12 employer and immediate supervisors prior to commencement of
13 any nursing or other health care related employment.

14 In addition to the above, Respondent shall notify the Board
15 in writing within seventy-two (72) hours after she obtains any
16 nursing or other health care related employment. Respondent shall
17 notify the Board in writing within seventy-two (72) hours after she
18 is terminated or separated, regardless of cause, from any nursing,
19 or other health care related employment with a full explanation of
20 the circumstances surrounding the termination or separation.

21 15. Respondent's probation is subject to revocation because he failed to
22 comply with Probation Condition No. 7, referenced above. The facts and circumstances
23 regarding this violation are as follows:

24 a. Respondent failed to obtain prior approval from the Board before
25 commencing employment at Corcoran State Prison.

26 b. Respondent failed to submit or cause to be submitted to the Board
27 all monthly Work Performance Evaluations from Corcoran State Prison.

28 c. Respondent failed to submit or cause to be submitted to the Board
the required Verification of Employment form from Corcoran State Prison.

 d. Respondent failed to provide a copy of the Decision and Order to
his employer and immediate supervisors prior to the commencement of any nursing or
other health care related employment at Corcoran State Prison.

 e. Respondent failed to notify the Board in writing within seventy-
two (72) hours after obtaining employment as a registered nurse at Corcoran State Prison.

1 **FIFTH CAUSE TO REVOKE PROBATION**

2 **(Supervision)**

3 16. At all times after the effective date of Respondent's probation,
4 Condition No. 8 has stated:

5 **Supervision.** Respondent shall obtain prior approval from
6 the Board regarding Respondent's level of supervision and/or
7 collaboration before commencing or continuing any employment
8 as a registered nurse, or education and training that includes patient
9 care.

10 Respondent shall practice only under the direct supervision
11 of a registered nurse in good standing (no current discipline) with
12 the Board of Registered Nursing, unless alternative methods of
13 supervision and/or collaboration (e.g., with an advanced practice
14 nurse or physician) are approved.

15 Respondent's level of supervision and/or collaboration may
16 include, but is not limited to the following:

17 (a) Maximum - The individual providing supervision
18 and/or collaboration is present in the patient care area or in any
19 other work setting at all times.

20 (b) Moderate - The individual providing supervision
21 and/or collaboration is in the patient care unit or in any other work
22 setting at least half the hours Respondent works.

23 (c) Minimum - The individual providing supervision
24 and/or collaboration has person-to-person communication with
25 Respondent at least twice during each shift worked.

26 (d) Home Health Care - If Respondent is approved to
27 work in the home health care setting, the individual providing
28 supervision and/or collaboration shall have person-to-person
communication with Respondent as required by the Board each
work day. Respondent shall maintain telephone or other
telecommunication contact with the individual providing
supervision and/or collaboration as required by the Board during
each work day. The individual providing supervision and/or
collaboration shall conduct, as required by the Board, periodic, on-
site visits to patients' homes visited by Respondent with or without
Respondent present.

29 17. Respondent's probation is subject to revocation because he failed to
30 comply with Probation Condition No. 8, referenced above. The facts and circumstances
31 regarding this violation are that Respondent failed to obtain prior approval regarding the required

32 ///

1 level of supervision and/or collaboration prior to commencement of employment at Corcoran
2 State Prison.

3 **SIXTH CAUSE TO REVOKE PROBATION**

4 **(Employment Limitations)**

5 18. At all times after the effective date of Respondent's probation,
6 Condition No. 9 has stated:

7 **Employment Limitations.** Respondent shall not work for
8 a nurse's registry, in any private duty position as a registered nurse,
9 a temporary nurse placement agency, a traveling nurse, or for an in-
house nursing pool.

10 Respondent shall not work for a licensed home health
11 agency as a visiting nurse unless the registered nursing supervision
12 and other protections for home visits have been approved by the
Board. Respondent shall not work in any other registered nursing
occupation where home visits are required.

13 Respondent shall not work in any health care setting as a
14 supervisor of registered nurses. The Board may additionally
restrict Respondent from supervising licensed vocational nurses
and/or unlicensed assistive personnel on a case-by-case basis.

15 Respondent shall not work as a faculty member in an
16 approved school of nursing or as an instructor in a Board approved
continuing education program.

17 If Respondent is working or intends to work in excess of 40
18 hours per week, the Board may request documentation to
19 determine whether there should be restrictions on the house of
work.

20 19. Respondent's probation is subject to revocation because he failed to
21 comply with Probation Condition No. 9, referenced above. The facts and circumstances
22 regarding this violation are that Respondent obtained employment through a nurse's registry or a
23 temporary nurse placement agency.

24 **SEVENTH CAUSE TO REVOKE PROBATION**

25 **(Complete a Nursing Course(s))**

26 20. At all times after the effective date of Respondent's probation,
27 Condition No. 10 has stated:

28 **Complete a Nursing Course(s).** Respondent, at his own
expense, shall enroll and successfully complete a course(s) relevant

1 to the practice of registered nursing no later than six months prior
2 to the end of his probationary term.

3 Respondent shall obtain prior approval from the Board
4 before enrolling in the course(s). Respondent shall submit to the
5 Board the original transcripts or certificates of completion for the
6 above required course(s). The Board shall return the original
7 documents to Respondent after photocopying them for its records.

8 21. Respondent's probation is subject to revocation because he failed to
9 comply with Probation Condition No. 10, referenced above. The facts and circumstances
10 regarding this violation are follows:

11 a. Respondent failed to complete the required assigned course work for
12 Category 1-5.

13 b. Respondent failed to complete the required course for Legal.

14 c. Respondent failed to complete the required course for Ethics.

15 **EIGHTH CAUSE TO REVOKE PROBATION**

16 **(Mental Health Examination)**

17 22. At all times after the effective date of Respondent's probation,
18 Condition No. 14 has stated:

19 **Mental Health Examination.** Respondent shall, within 45
20 days of the effective date of this Decision, have a mental health
21 examination including psychological testing as appropriate to
22 determine her capability to perform the duties of a registered nurse.
23 The examination will be performed by a psychiatrist, psychologist
24 or other licensed mental health practitioner approved by the Board.
25 The examining mental health practitioner will submit a written
26 report of that assessment and recommendations to the Board. All
27 costs are the responsibility of Respondent. Recommendations for
28 treatment, therapy or counseling made as a result of the mental
health examination will be instituted and followed by Respondent.

If Respondent is determined to be unable to practice safely
as a registered nurse, the licensed mental health care practitioner
making this determination shall immediately notify the Board and
Respondent by telephone, and the Board shall request that the
Attorney General's office prepare an accusation or petition to
revoke probation. Respondent shall immediately cease practice
and may not resume practice until notified by the Board. During
this period of suspension, Respondent shall not engage in any
practice for which a license issued by the Board is required, until
the Board has notified Respondent that a mental health
determination permits Respondent to resume practice. This period

1 of suspension will not apply to the reduction of this probationary
2 time period.

3 If Respondent fails to have the above assessment submitted
4 to the Board within the 45-day requirement, Respondent shall
5 immediately cease practice and shall not resume practice until
6 notified by the Board. This period of suspension will not apply to
7 the reduction of this probationary time period. The Board may
8 waive or postpone this suspension only if significant, documented
9 evidence of mitigation is provided. Such evidence must establish
10 good faith efforts by Respondent to obtain the assessment, and a
11 specific date for compliance must be provided. Only one such
12 waiver or extension may be permitted.

13 23. Respondent's probation is subject to revocation because he failed to
14 comply with Probation Condition No. 14, referenced above. The facts and circumstances
15 regarding this violation are that Respondent failed to have psychological testing as recommended
16 by a Mental Health Examiner.

17 **NINTH CAUSE TO REVOKE PROBATION**

18 **(Therapy or Counseling Program)**

19 24. At all times after the effective date of Respondent's probation, Condition
20 No. 15 has stated:

21 **Therapy or Counseling Program.** Respondent, at his
22 expense, shall participate in an on-going counseling program until
23 such time as the Board releases her from this requirement and only
24 upon the recommendation of the counselor. Written progress
25 reports from the counselor will be required at various intervals.

26 25. Respondent's probation is subject to revocation because he failed to
27 comply with Probation Condition No. 15, referenced above. The facts and circumstances
28 regarding this violation are that Respondent failed to participate in on-going treatment as
recommended by a Mental Health Examiner.

///

///

///

///

///

///


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking the probation that was granted by the Board in Case No. 2004-92 and imposing the disciplinary order that was stayed, thereby revoking Registered Nurse License No. 646016 issued to Eric P. Phillips;
2. Revoking or suspending Registered Nurse License No. 646016 issued to Eric P. Phillips; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 9/10/07



RUTH ANN TERRY, M.P.H, R.N
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

Exhibit A

Decision and Order

Board of Registered Nursing Case No. 2004-92

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

Eric P. Phillips
2976 Robinwood Avenue
Clovis, CA 93611

Case No. 2004-92

Respondent

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in the above entitled matter.

This Decision shall become effective on September 24, 2004.

IT IS SO ORDERED August 25, 2004.

Sandra R. Erickson

FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

1 BILL LOCKYER, Attorney General
of the State of California
2 TAMARA M. COLSON, State Bar No. 190223
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, CA 94244-2550
5 Telephone: (916) 323-9119
6 Facsimile: (916) 327-8643

7 Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 ERIC P. PHILLIPS
13 2976 Robinwood Avenue
Clovis, California 93611

14 Respondent.

Case No. 2004-92

OAH No. N2004010235

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15
16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
17 above-entitled proceedings that the following matters are true:

18 PARTIES

19 1. Complainant Ruth Ann Terry, M.P.H., R.N., ("Complainant") is the
20 Executive Officer of the Board of Registered Nursing. She brought this action solely in her
21 official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State
22 of California, by Tamara M. Colson, Deputy Attorney General.

23 2. Respondent Eric P. Phillips ("Respondent") is represented in this
24 proceeding by attorney Jim T. Elia, whose address is 2300 Tulare Street, Suite 140, Fresno,
25 California 93721.

26 3. On or about July 17, 2001, the Board of Registered Nursing received an
27 Application for Licensure from Respondent. On or about December 26, 2002, the Board denied
28 Respondent's application for licensure.

JURISDICTION

4. An Statement of Issues with Board Case No. 2004-61 and OAH Case No. N2004010235 ("Statement of Issues") was filed before the Board and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on November 19, 2003. A copy of the Statement of Issues is attached hereto as exhibit A and fully incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in the Statement of Issues. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in the Statement of Issues.

9. Respondent agrees that his Registered Nurse License is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

///

///

CIRCUMSTANCES IN MITIGATION

10. Respondent has never been the subject of any disciplinary action. He is admitting responsibility at an early stage in the proceedings.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

///

///

///

///

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that the application of Respondent for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to Respondent. Said license shall immediately be revoked, the order of revocation stayed and Respondent placed on probation for a period of three (3) years on the following conditions:

A. Severability Clause.

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. Obey All Laws.

Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process. If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. Comply with the Board's Probation Program.

Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

1 Upon successful completion of probation, Respondent's license shall be fully
2 restored.

3 **3. Report in Person.**

4 Respondent, during the period of probation, shall appear in person at
5 interviews/meetings as directed by the Board or its designated representatives.

6 **4. Residency, Practice, or Licensure Outside of State.**

7 Periods of residency or practice as a registered nurse outside of California shall
8 not apply toward a reduction of this probation time period. Respondent's probation is tolled, if
9 and when he resides outside of California. Respondent must provide written notice to the Board
10 within 15 days of any change of residency or practice outside the state, and within 30 days prior
11 to re-establishing residency or returning to practice in this state.

12 Respondent shall provide a list of all states and territories where he has ever been
13 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
14 provide information regarding the status of each license and any changes in such license status
15 during the term of probation. Respondent shall inform the Board if he applies for or obtains a
16 new nursing license during the term of probation.

17 **5. Submit Written Reports.**

18 Respondent, during the period of probation, shall submit or cause to be submitted
19 such written reports/declarations and verification of actions under penalty of perjury, as required
20 by the Board. These reports/declarations shall contain statements relative to Respondent's
21 compliance with all the conditions of the Board's Probation Program. Respondent shall
22 immediately execute all release of information forms as may be required by the Board or its
23 representatives.

24 Respondent shall provide a copy of this Decision to the nursing regulatory agency
25 in every state and territory in which he has a registered nurse license.

26 ///

27 ///

28 ///

1 **6. Function as a Registered Nurse.**

2 Respondent, during the period of probation, shall engage in the practice of
3 registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or
4 as determined by the Board.

5 For purposes of compliance with the section, "engage in the practice of registered
6 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
7 work in any non-direct patient care position that requires licensure as a registered nurse.

8 The Board may require that advanced practice nurses engage in advanced practice
9 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the
10 Board.

11 If Respondent has not complied with this condition during the probationary term,
12 and Respondent has presented sufficient documentation of his good faith efforts to comply with
13 this condition, and if no other conditions have been violated, the Board, in its discretion, may
14 grant an extension of Respondent's probation period up to one year without further hearing in
15 order to comply with this condition. During the one year extension, all original conditions of
16 probation shall apply.

17 **7. Employment Approval and Reporting Requirements.**

18 Respondent shall obtain prior approval from the Board before commencing or
19 continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to
20 be submitted to the Board all performance evaluations and other employment related reports as a
21 registered nurse upon request of the Board.

22 Respondent shall provide a copy of this Decision to his employer and immediate
23 supervisors prior to commencement of any nursing or other health care related employment.

24 In addition to the above, Respondent shall notify the Board in writing within
25 seventy-two (72) hours after he obtains any nursing or other health care related employment.
26 Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated
27 or separated, regardless of cause, from any nursing, or other health care related employment with
28 a full explanation of the circumstances surrounding the termination or separation.

8. Supervision.

Respondent shall obtain prior approval from the Board regarding Respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

(d) Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.

9. Employment Limitations.

Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

///

1 Respondent shall not work for a licensed home health agency as a visiting nurse
2 unless the registered nursing supervision and other protections for home visits have been
3 approved by the Board. Respondent shall not work in any other registered nursing occupation
4 where home visits are required.

5 Respondent shall not work in any health care setting as a supervisor of registered
6 nurses. The Board may additionally restrict Respondent from supervising licensed vocational
7 nurses and/or unlicensed assistive personnel on a case-by-case basis.

8 Respondent shall not work as a faculty member in an approved school of nursing
9 or as an instructor in a Board approved continuing education program.

10 Respondent shall work only on a regularly assigned, identified and predetermined
11 worksite(s) and shall not work in a float capacity.

12 If Respondent is working or intends to work in excess of 40 hours per week, the
13 Board may request documentation to determine whether there should be restrictions on the hours
14 of work.

15 **10. Complete a Nursing Course(s).**

16 Respondent, at his own expense, shall enroll and successfully complete a
17 course(s) relevant to the practice of registered nursing no later than six months prior to the end of
18 his probationary term.

19 Respondent shall obtain prior approval from the Board before enrolling in the
20 course(s). Respondent shall submit to the Board the original transcripts or certificates of
21 completion for the above required course(s). The Board shall return the original documents to
22 Respondent after photocopying them for its records.

23 **11. Violation of Probation.**

24 If Respondent violates the conditions of his probation, the Board after giving
25 Respondent notice and an opportunity to be heard, may set aside the stay order and impose the
26 stayed discipline (revocation/suspension) of Respondent's license.

27 If during the period of probation, an accusation or petition to revoke probation has
28 been filed against Respondent's license or the Attorney General's Office has been requested to

1 prepare an accusation or petition to revoke probation against Respondent's license, the
2 probationary period shall automatically be extended and shall not expire until the accusation or
3 petition has been acted upon by the Board.

4 **12. License Surrender.**

5 During Respondent's term of probation, if he ceases practicing due to retirement,
6 health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may
7 surrender his license to the Board. The Board reserves the right to evaluate Respondent's request
8 and to exercise its discretion whether to grant the request, or to take any other action deemed
9 appropriate and reasonable under the circumstances, without further hearing. Upon formal
10 acceptance of the tendered license and wall certificate, Respondent will no longer be subject to
11 the conditions of probation.

12 Surrender of Respondent's license shall be considered a disciplinary action and
13 shall become a part of Respondent's license history with the Board. A registered nurse whose
14 license has been surrendered may petition the Board for reinstatement no sooner than the
15 following minimum periods from the effective date of the disciplinary decision:

16 (1) Two years for reinstatement of a license that was surrendered for any
17 reason other than a mental or physical illness; or

18 (2) One year for a license surrendered for a mental or physical illness.

19 **13. Physical Examination.**

20 Within 45 days of the effective date of this Decision, Respondent, at his expense,
21 shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the
22 Board before the assessment is performed, submit an assessment of the Respondent's physical
23 condition and capability to perform the duties of a registered nurse. Such an assessment shall be
24 submitted in a format acceptable to the Board. If medically determined, a recommended
25 treatment program will be instituted and followed by the Respondent with the physician, nurse
26 practitioner, or physician assistant providing written reports to the Board on forms provided by
27 the Board.

28 ///

1 If Respondent is determined to be unable to practice safely as a registered nurse,
2 the licensed physician, nurse practitioner, or physician assistant making this determination shall
3 immediately notify the Board and Respondent by telephone, and the Board shall request that the
4 Attorney General's office prepare an accusation or petition to revoke probation. Respondent
5 shall immediately cease practice and shall not resume practice until notified by the Board.
6 During this period of suspension, Respondent shall not engage in any practice for which a license
7 issued by the Board is required until the Board has notified Respondent that a medical
8 determination permits Respondent to resume practice. This period of suspension will not apply
9 to the reduction of this probationary time period.

10 If Respondent fails to have the above assessment submitted to the Board within
11 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
12 practice until notified by the Board. This period of suspension will not apply to the reduction of
13 this probationary time period. The Board may waive or postpone this suspension only if
14 significant, documented evidence of mitigation is provided. Such evidence must establish good
15 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
16 provided. Only one such waiver or extension may be permitted.

17 **14. Mental Health Examination.**

18 Respondent shall, within 45 days of the effective date of this Decision, have a
19 mental health examination including psychological testing as appropriate to determine his
20 capability to perform the duties of a registered nurse. The examination will be performed by a
21 psychiatrist, psychologist or other licensed mental health practitioner approved by the Board.
22 The examining mental health practitioner will submit a written report of that assessment and
23 recommendations to the Board. All costs are the responsibility of Respondent.
24 Recommendations for treatment, therapy or counseling made as a result of the mental health
25 examination will be instituted and followed by Respondent.

26 If Respondent is determined to be unable to practice safely as a registered nurse,
27 the licensed mental health care practitioner making this determination shall immediately notify
28 the Board and Respondent by telephone, and the Board shall request that the Attorney General's

1 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
2 practice and may not resume practice until notified by the Board. During this period of
3 suspension, Respondent shall not engage in any practice for which a license issued by the Board
4 is required, until the Board has notified Respondent that a mental health determination permits
5 Respondent to resume practice. This period of suspension will not apply to the reduction of this
6 probationary time period.

7 If Respondent fails to have the above assessment submitted to the Board within
8 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
9 practice until notified by the Board. This period of suspension will not apply to the reduction of
10 this probationary time period. The Board may waive or postpone this suspension only if
11 significant, documented evidence of mitigation is provided. Such evidence must establish good
12 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
13 provided. Only one such waiver or extension may be permitted.

14 **15. Therapy or Counseling Program.**

15 Respondent, at his expense, shall participate in an on-going counseling program
16 until such time as the Board releases him from this requirement and only upon the
17 recommendation of the counselor. Written progress reports from the counselor will be required
18 at various intervals.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Jim T. Elia. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: 5/27/14


ERIC P. PHILLIPS (Respondent)
Respondent

I have read and fully discussed with Respondent Eric P. Phillips the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 5-27-04


JIM T. ELIA
Attorney for Respondent

///

///

///

///

///

///

///

///

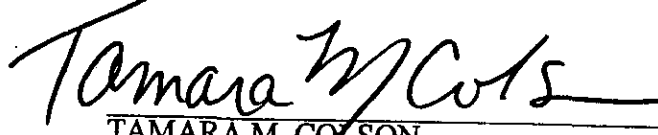
///

1 ENDORSEMENT

2 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
3 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
4 Affairs.

5
6 DATED: 05/27/04

7 BILL LOCKYER, Attorney General
8 of the State of California

9 

10 TAMARA M. COLSON
11 Deputy Attorney General

12 Attorneys for Complainant

13
14 I:\ALL\Colson\PHILLIPS, ERIC P\PLEADING\Stipulation.wpd
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

Statement of Issues

Board Case No. 2004-92
OAH Case No. 2004010235

1 BILL LOCKYER, Attorney General
of the State of California
2 TAMARA M. COLSON, State Bar No. 190223
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, CA 94244-2550
5 Telephone: (916) 323-9119
Facsimile: (916) 327-8643
6
7 Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues Against:

Case No. 2004-92

12 **ERIC P. PHILLIPS**
2976 Robinwood Avenue
13 Clovis, California 93611

STATEMENT OF ISSUES

14 Respondent.
15

16 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

17 1. Complainant brings this Statement of Issues solely in her official capacity
18 as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs,
19 State of California ("Board").
20

21 **I.**

LICENSE HISTORY

22 2. On or about July 17, 2001, the Board received an Application for
23 Licensure by Examination from Eric P. Phillips ("Respondent"). On or about December 26,
24 2002, the Board denied Respondent's application for licensure.
25

26 ///

27 ///

28 ///

II.

RELEVANT STATUTES

3. Section 2761 of the Business and Professions Code provides that the Board may deny an application for licensure for making or giving any false statement or information in connection with an application for a license or certificate.

4. Business and Professions Code section 2761(a) provides that the Board may deny an application for a license on the basis of unprofessional conduct.

5. Section 2761(e) of the Business and Professions Code provides that the Board may deny an application for a license for "making or giving any false statement or information in connection with the application for issuance of a certificate or license."

6. Section 2761(f) of the Business and Professions Code provides that the Board may deny an application for a license or take action against a certified nurse based on "conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

7. Section 480 of the Business and Professions Code states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. Respondent's connection within the meaning of this section means a plea or verdict of guilty on a conviction following a plea of nolo contendere...

(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

1 8. Business and Professions Code section 490 provides in pertinent part:

2 A board may suspend or revoke a license on the
3 ground that the licensee has been convicted of a
4 crime, if the crime is substantially related to the
5 qualifications, functions or duties of the business or
6 profession for which the license was issued. A
conviction within the meaning of this section means
a plea or verdict of guilty or a conviction following
a plea of nolo contendere...

7 III.

8 FACTUAL BACKGROUND

9 9. On or about May 20, 2001 respondent submitted an application for
10 licensure and certified under penalty of perjury the truthfulness of all statements, answers and
11 representations in the application. The application had "yes/no" boxes and inquired about
12 convictions by stating "been convicted of any offense other than traffic violations. If yes, explain
13 fully as described in the applicant instructions..." Respondent checked the "yes" box and
14 disclosed his 1995 conviction for carrying a loaded firearm. The results of Respondent's
15 fingerprint card revealed additional convictions in 1988 and 1998. After notification by the
16 Board, Respondent eventually provided descriptions of said convictions.

17 10. On or about May 3, 1988, in the case of *People v. Eric Phillips*, Fresno
18 County Municipal Court Case Number M17642-0, Respondent was convicted, based on his plea
19 of nolo contendere, of a violation of Penal Code section 242 (fighting in public), a misdemeanor.

20 11. On or about July 27, 1995, in the case of *People v. Eric Phillips*, Fresno
21 County Case Number 0530087-6, Respondent was convicted, based on his plea of nolo
22 contendere, of a violation of Penal Code section 12031 (carrying a loaded firearm in public), a
23 misdemeanor.

24 12. On or about March 3, 1998, in the case of *People v. Eric P. Phillips*,
25 Fresno County Superior Court Case Number F97915695-1, Respondent was convicted, based on
26 his plea of nolo contendere, of a violation of Penal Code section 243(d) (battery), a
27 misdemeanor.

28 ///

IV.

CAUSES FOR DENIAL

A. Violation of Business & Professions Code § 2761(a).

13. Respondent's application for licensure is subject to denial under Business and Professions Code section 2761(a) for unprofessional conduct. Said unprofessional conduct constitutes failing to disclose convictions with his application as described in paragraph 9, which is incorporated herein by this reference, and three criminal convictions as described in paragraphs 10 through 12, which are incorporated herein by this reference. Such conduct is substantially related to the qualifications, functions or duties of a registered nurse.

B. Violation of Business & Professions Code § 2761(e).

14. Respondent's application for licensure is subject to denial pursuant to Business and Professions Code section 2761(e) as he provided false information with his application when he failed to disclose all of his criminal convictions as discussed in paragraph 9, which is incorporated herein by this reference. Such conduct is substantially related to the qualifications, functions and duties of a registered nurse.

C. Violation of Business & Professions Code § 2761(f).

15. Respondent's application for licensure is subject to denial pursuant to Business and Professions Code section 2761(f) in that Respondent was convicted of three separate crimes as described in paragraphs 10 through 12, which are incorporated herein by this reference. Such conduct is substantially related to the qualifications, functions and duties of a registered nurse.

D. Violation of Business & Professions Code §§ 480.

16. Respondent's application for licensure is subject to denial pursuant to Business and Professions Code 480(a)(1) in that Respondent was convicted of three separate crimes as described in paragraphs 10 through 12, which are incorporated herein by this reference. Such conduct is substantially related to the qualifications, functions and duties of a registered nurse.

///

1 17. Respondent's application for licensure is subject to denial pursuant to
2 Business and Professions Code section 480(a)(3) in that Respondent was convicted of three
3 separate crimes as described in paragraphs 10 through 12, which are incorporated herein by this
4 reference. Pursuant to Business and Professions Code sections 2761 and 490, such convictions
5 would be grounds for suspension or revocation of a license if done by a registered nursing
6 licentiate. Such conduct is substantially related to the qualifications, functions and duties of a
7 registered nurse.

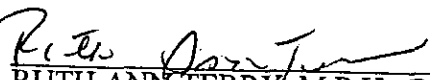
8 **PRAYER**

9 **WHEREFORE**, Complainant prays that a hearing be held on the matters herein
10 alleged, and following said hearing, the Board issue its decision and order, as follows:

11 1. Denying the application of Eric P. Phillips for a licensure as registered
12 nurse in the State of California; and

13 2. Taking such other and further action as deemed necessary and proper.
14

15 DATED: 10/28/03
16

17 
18 RUTH ANN TERRY, M.P.H., R.N.
19 Executive Officer
20 Board of Registered Nursing
21 Department of Consumer Affairs
22 State of California
23 Complainant
24
25
26
27
28

03579110
SA2003103287
pms (9/4/03)

This certifies that this is a true and correct copy of
records on file in this office pertaining to:

ERIC P. PHILLIPS

BOARD OF REGISTERED NURSING,

Paul Hochstadt, D.T.